

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

As Engrossed: H2/23/17

# A Bill

HOUSE BILL 1512

5 By: Representatives Davis, Ballinger, Boyd, D. Meeks, Payton  
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## For An Act To Be Entitled

8 AN ACT CONCERNING SALES BY SELLERS THAT DO NOT HAVE A  
9 PHYSICAL PRESENCE IN THE STATE TO PURCHASERS IN THIS  
10 STATE; TO REDUCE THE INCOME TAX RATES APPLICABLE TO  
11 INDIVIDUALS, TRUSTS, AND ESTATES USING THE REVENUES  
12 DERIVED FROM THE COLLECTION OF SALES AND USE TAX FROM  
13 SELLERS THAT DO NOT HAVE A PHYSICAL PRESENCE IN THE  
14 STATE; TO DECLARE AN EMERGENCY; AND FOR OTHER  
15 PURPOSES.  
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## Subtitle

18  
19 TO REDUCE THE INCOME TAX RATES APPLICABLE  
20 TO INDIVIDUALS, TRUSTS, AND ESTATES USING  
21 REVENUES DERIVED FROM SALES AND USE TAX  
22 FROM SELLERS THAT DO NOT HAVE A PHYSICAL  
23 PRESENCE IN THE STATE; AND TO DECLARE AN  
24 EMERGENCY.  
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27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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29 SECTION 1. Arkansas Code § 26-51-201(e), concerning the income tax  
30 levied on individuals, trusts, and estates, is amended to read as follows:

31 (e) ~~If the director determines that federal law authorizes the state~~  
32 ~~to collect sales and use tax from sellers that do not have a physical~~  
33 ~~presence in the state, then after the first twelve (12) months of collecting~~  
34 ~~sales and use tax from sellers that do not have a physical presence in the~~  
35 ~~state, the~~ The director shall:

36 (1) After making the deductions required under § 19-5-



1 ~~202(b)(2)(B)(i), certify to the Governor and the Office of Economic and Tax~~  
 2 ~~Policy Arkansas Tax Reform and Relief Legislative Task Force the amount of~~  
 3 ~~available net general revenues attributable to the collection of sales and~~  
 4 ~~use tax from July 1, 2017, through June 30, 2018, from sellers that: do not~~  
 5 ~~have a physical presence in the state during the first twelve (12) months of~~  
 6 ~~collections~~

7 (A) Do not have a physical presence in Arkansas;

8 (B) Made sales of taxable goods or services, or both, to  
 9 Arkansas purchasers; and

10 (C) Began collecting and remitting Arkansas sales and use  
 11 taxes on or after January 1, 2017;

12 (2) Use ~~any~~ the amount under subdivision (e)(1) of this section  
 13 ~~that exceeds seventy million dollars (\$70,000,000) to reduce the rate of four~~  
 14 ~~and five tenths percent (4.5%)~~ six and nine-tenths percent (6.9%) in the  
 15 table contained in subdivision ~~(a)(7)~~ (a)(9) of this section equally for all  
 16 taxpayers subject to the rate of ~~four and five tenths percent (4.5%)~~ six and  
 17 nine-tenths percent (6.9%);

18 (3) Certify the amount of the reduction of the income tax rate  
 19 under this subsection to the Governor and the ~~Office of Economic and Tax~~  
 20 ~~Policy Arkansas Tax Reform and Relief Legislative Task Force;~~ and

21 (4) Incorporate the reduced income tax rate into the table  
 22 prescribed under subsection (d) of this section, which shall be applicable  
 23 ~~for each tax year thereafter~~ tax years beginning on and after January 1,  
 24 2019.

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 26 SECTION 2. Arkansas Code Title 26, Chapter 52, Subchapter 2, is  
 27 amended to add an additional section to read as follows:

28 26-52-211. Inquiry regarding in-state presence.

29 The Department of Finance and Administration may inquire as to whether  
 30 an applicant for or a holder of a permit under this chapter has a physical  
 31 presence in this state for purposes of administering and collecting sales and  
 32 use tax.

33  
 34 SECTION 3. Arkansas Code § 26-52-317(a), concerning the sales tax  
 35 levied on food and food ingredients, is amended to read as follows:

36 (a)(1)(A) The Director of the Department of Finance and Administration

1 ~~shall determine the following conditions:~~

2 ~~(A) That federal law authorizes the state to collect sales~~  
3 ~~and use tax from some or all of the sellers that have no physical presence in~~  
4 ~~the State of Arkansas and that make sales of taxable goods and services to~~  
5 ~~Arkansas purchasers;~~

6 ~~(B) That initiating the collection of sales and use tax~~  
7 ~~from these sellers would increase the net available general revenues needed~~  
8 ~~to fund state agencies, services, and programs; and~~

9 ~~(C)(i) That during a six-month consecutive period, the~~  
10 ~~amount of net available general revenues attributable to the collection of~~  
11 ~~sales and use tax from sellers that have no physical presence in the State of~~  
12 ~~Arkansas is equal to or greater than one hundred fifty percent (150%) of~~  
13 ~~sales and use tax collected under subsection (c) of this section and § 26-53-~~  
14 ~~145 on food and food ingredients.~~

15 ~~(ii) The director shall make the determination under~~  
16 ~~subdivision (a)(1)(C)(i) of this section on a monthly basis following the~~  
17 ~~determination that the conditions under subdivision (a)(1)(A) of this section~~  
18 ~~have been met.~~

19 ~~(2)(A) Beginning July 1, 2013, the The director shall make a~~  
20 ~~monthly determination as to whether the aggregate amount of deductions from~~  
21 ~~net general revenues attributable to the following during the most recently~~  
22 ~~ended six-month consecutive period, as compared with the same six-month~~  
23 ~~period in the prior year, has declined by thirty-five million dollars~~  
24 ~~(\$35,000,000) or more:~~

25 ~~(i) The Educational Adequacy Fund;~~

26 ~~(ii) Bonds issued under the Arkansas College Savings~~  
27 ~~Bond Act of 1989, § 6-62-701 et seq.;~~

28 ~~(iii) Bonds issued under the Arkansas Higher~~  
29 ~~Education Technology and Facility Improvement Act of 2005, § 6-62-1101 et~~  
30 ~~seq.;~~

31 ~~(iv) The City-County Tourist Facilities Aid Fund;~~

32 ~~(v) Amounts disbursed or approved to be disbursed by~~  
33 ~~the Department of Education for desegregation expenses under any~~  
34 ~~desegregation settlement agreement, as certified by the Treasurer of State~~  
35 ~~and the Chief Fiscal Officer of the State under § 6-20-212; and~~

36 ~~(vi) Bonds issued under the Arkansas Water, Waste~~

1 *Disposal and Pollution Abatement Facilities Financing Act of 1997 and the*  
 2 *Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing*  
 3 *Act of 2007, § 15-20-1301 et seq.*

4 *(B)(i) In making the determination in this subdivision*  
 5 ~~*(a)(2)*~~ *(a)(1), the director shall consider all economic factors existing at*  
 6 *the time of the determination that could potentially affect the decline in*  
 7 *the aggregate amount of deductions, including without limitation pending*  
 8 *litigation.*

9 *(ii) If the consideration of additional economic*  
 10 *factors under subdivision ~~(a)(2)(B)(i)~~ (a)(1)(B)(i) of this section results*  
 11 *in a determination that the decline in the aggregate amount of deductions is*  
 12 *not likely to remain at that reduced level, the director shall conclude that*  
 13 *the conditions in this subdivision ~~(a)(2)~~ (a)(1) have not been met.*

14 ~~*(3) (2) When the director finds that all of the conditions in*~~  
 15 ~~*either subdivision (a)(1) of this section or subdivision (a)(2) of this*~~  
 16 ~~*section have been met, then the gross receipts or gross proceeds taxes levied*~~  
 17 ~~*under subsection (c) of this section shall be levied at the rate of zero*~~  
 18 ~~*percent (0%) on the sale of food and food ingredients beginning on the first*~~  
 19 ~~*day of the calendar quarter that is at least thirty (30) days following the*~~  
 20 ~~*determination of the director.*~~

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 22 *SECTION 4. Arkansas Code § 26-53-145(a), concerning the compensating*  
 23 *use tax levied on food and food ingredients, is amended to read as follows:*

24 ~~*(a)(1)(A) The Director of the Department of Finance and Administration*~~  
 25 ~~*shall determine the following conditions:*~~

26 ~~*(A) That federal law authorizes the state to collect sales*~~  
 27 ~~*and use tax from some or all of the sellers that have no physical presence in*~~  
 28 ~~*the State of Arkansas and that make sales of taxable goods and services to*~~  
 29 ~~*Arkansas purchasers;*~~

30 ~~*(B) That initiating the collection of sales and use tax*~~  
 31 ~~*from these sellers would increase the net available general revenues needed*~~  
 32 ~~*to fund state agencies, services, and programs; and*~~

33 ~~*(C)(i) That during a six-month consecutive period, the*~~  
 34 ~~*amount of net available general revenues attributable to the collection of*~~  
 35 ~~*sales and use tax from sellers that have no physical presence in the State of*~~  
 36 ~~*Arkansas is equal to or greater than one hundred fifty percent (150%) of*~~

1 ~~sales and use tax collected under subsection (c) of this section and § 26-52-~~  
2 ~~317 on food and food ingredients.~~

3 ~~(ii) The director shall make the determination under~~  
4 ~~subdivision (a)(1)(C)(i) of this section on a monthly basis following the~~  
5 ~~determination that the conditions under subdivision (a)(1)(A) of this section~~  
6 ~~have been met.~~

7 ~~(2)(A) Beginning July 1, 2013, the~~ The director shall make a  
8 monthly determination as to whether the aggregate amount of deductions from  
9 net general revenues attributable to the following during the most recently  
10 ended six-month consecutive period, as compared with the same six-month  
11 period in the prior year, has declined by thirty-five million dollars  
12 (\$35,000,000) or more:

13 (i) The Educational Adequacy Fund;

14 (ii) Bonds issued under the Arkansas College Savings  
15 Bond Act of 1989, § 6-62-701 et seq.;

16 (iii) Bonds issued under the Arkansas Higher  
17 Education Technology and Facility Improvement Act of 2005, § 6-62-1101 et  
18 seq.;

19 (iv) The City-County Tourist Facilities Aid Fund;

20 (v) Amounts disbursed or approved to be disbursed by  
21 the Department of Education for desegregation expenses under any  
22 desegregation settlement agreement, as certified by the Treasurer of State  
23 and the Chief Fiscal Officer of the State under § 6-20-212; and

24 (vi) Bonds issued under the Arkansas Water, Waste  
25 Disposal and Pollution Abatement Facilities Financing Act of 1997 and the  
26 Arkansas Water, Waste Disposal, and Pollution Abatement Facilities Financing  
27 Act of 2007, § 15-20-1301 et seq.

28 (B)(i) In making the determination in this subdivision  
29 ~~(a)(2)~~ (a)(1), the director shall consider all economic factors existing at  
30 the time of the determination that could potentially affect the decline in  
31 the aggregate amount of deductions, including without limitation pending  
32 litigation.

33 (ii) If the consideration of additional economic  
34 factors under subdivision ~~(a)(2)(B)(i)~~ (a)(1)(B)(i) of this section results  
35 in a determination that the decline in the aggregate amount of deductions is  
36 not likely to remain at that reduced level, the director shall conclude that

1 the conditions in this subdivision ~~(a)(2)~~ (a)(1) have not been met.

2 ~~(3)~~ (2) When the director finds that ~~all of~~ the conditions in  
3 ~~either~~ subdivision (a)(1) ~~or subdivision (a)(2)~~ of this section have been  
4 met, then the compensating use taxes levied under subsection (c) of this  
5 section shall be levied at the rate of zero percent (0%) on the sale of food  
6 and food ingredients beginning on the first day of the calendar quarter that  
7 is at least thirty (30) days following the determination of the director.

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9 SECTION 5. DO NOT CODIFY. Distribution of sales and use taxes  
10 collected by remote sellers.

11 (a) As used in this section, "new remote seller" means a seller who:

12 (1) Does not have a physical presence in Arkansas;

13 (2) Made sales of taxable goods or services, or both, to  
14 Arkansas purchasers; and

15 (3) Began collecting and remitting Arkansas sales and use taxes  
16 on or after January 1, 2017.

17 (b) Beginning in July 2017, by July 31 and January 31 of each year,  
18 the Director of the Department of Finance and Administration shall certify  
19 the following information to the Governor and the Arkansas Tax Reform and  
20 Relief Legislative Task Force for the January-June and July-December time  
21 periods, respectively:

22 (1) The total number of new remote sellers; and

23 (2) After making the deductions required under § 19-5-  
24 202(b)(2)(B)(i), the total sales and use tax revenue collected and remitted  
25 by the new remote sellers.

26 (c) The director shall transfer the amount certified for each time  
27 period under subsection (b) of this section to the Treasurer of State to be  
28 deposited into the Long Term Reserve Fund.

29 (d) This section expires February 1, 2019.

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31 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the  
32 General Assembly of the State of Arkansas that income tax rates for Arkansas  
33 residents are too high in comparison to the income tax rates in surrounding  
34 states; that these burdensome income tax rates prevent Arkansas from being  
35 competitive with surrounding states in the region; that the state anticipates  
36 an increase in sales and use tax revenue from sellers that do not have a

1 physical presence in the state; that the increase in sales and use tax  
2 collections can be used to offset an income tax reduction without negatively  
3 affecting the state's fiscal health; and that this act is immediately  
4 necessary because it is in the best interests of the state to increase  
5 Arkansas's ability to compete in the region by dedicating as much funding as  
6 is economically possible and prudent to relieve the income tax burden  
7 suffered by taxpayers in the state. Therefore, an emergency is declared to  
8 exist, and this act being immediately necessary for the preservation of the  
9 public peace, health, and safety shall become effective on:

10 (1) The date of its approval by the Governor;

11 (2) If the bill is neither approved nor vetoed by the Governor,  
12 the expiration of the period of time during which the Governor may veto the  
13 bill; or

14 (3) If the bill is vetoed by the Governor and the veto is  
15 overridden, the date the last house overrides the veto.

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17 /s/Davis  
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